



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR – MT, RR, OPR-DR, MNR-DR, FFL

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlords requested:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant requested:

- more time to make an application to cancel the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 66;
- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46; and
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;

While the landlords’ agents attended the hearing by way of conference call, the tenant did not. I waited until 9:40 a.m. to enable the tenant to participate in this scheduled hearing for 9:30 a.m. The agents were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

The agents gave sworn testimony that on October 22, 2021 copies of the Application for Dispute Resolution hearing package ('Application') and evidence were served to the tenant by registered mail. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with copies of the landlords' application and evidence, five days later on October 27, 2021. The agents advised that the tenant was also emailed a complete package of all documentation on the same day.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession based on the 10 Day Notice?
Are the landlords entitled to a monetary award for unpaid rent or money owed under the tenancy agreement, regulation, or *Act*?
Are the landlords entitled to recover the filing fee for this application?

Background and Evidence

The agents gave undisputed testimony regarding the following facts. The tenancy began on September 1, 2021, with monthly rent set at \$1387.50, payable on the first of each month. No deposit was paid by the tenant.

The landlord issued the 10 Day Notice on October 4, 2021, by posting the notice on the tenants door, as well a copy of the notice was emailed to the tenant. A copy of the 10 Day Notice was included in the landlord's evidence as well as a Proof of Service. The agents testified that the tenant has not paid any rent since the 10 Day Notice was issued to the tenant. The agents testified that the tenant made two payments but those payments were cancelled and the landlord incurred NSF charges from the bank.

The agents request an order of possession and a monetary order for the following items.

Item	Amount
Unpaid Rent for September 2021-February 2022	\$8,325.00
NSF Fees	80.00

Late Fees	150.00
Recovery of Filing Fee	100.00
Total Monetary Order Requested	\$8,655.00

Analysis

Section 55(1) of the *Act* reads as follows:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

In the absence of any evidence or submissions from the tenant, I order the tenant's application dismissed without liberty to reapply. I find that the 10 Day Notice complies with section 52 of the *Act*.

Based on my decision to dismiss the tenant's application for dispute resolution and pursuant to section 55(1) of the *Act*, I find that this tenancy ended on the corrected effective date of the 10 Day Notice, October 17, 2021. I find that the landlords are entitled to a 2 day Order of Possession. The landlords will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlords may enforce this Order in the Supreme Court of British Columbia.

The agents provided undisputed evidence that the tenant failed to pay the rent in full for the months of September 2021 to February 2022, inclusive, along with late fees and NSF charges from the bank.

I find that the landlord is entitled to the recovery the \$100.00 filing fee from the tenant. The agents requested that the landlord be granted the rent due for March, however I find that request pre-mature. The landlord is at liberty to pursue that in a separate application if they wish.

Conclusion

As the tenant did not attend this hearing, their entire application is dismissed without leave to reapply.

The landlord has established a claim for \$8,655.00. I grant the landlord an order under section 67 for the balance due of \$8,655.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

I grant an Order of Possession to the landlords effective **two (2) days after service on the tenants**. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: February 22, 2022

Residential Tenancy Branch